



U.S. Citizenship  
and Immigration  
Services

FILE:

Office: Vermont Service Center

Date:

OCT 28 2004

IN RE:

Applicant:

APPLICATION:

Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:

Self-represented

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director  
Administrative Appeals Office

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

DUPLICATE COPY

**DISCUSSION:** The application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is a native and citizen of El Salvador who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director denied the application because the applicant failed to establish her qualifying residence and physical presence in the United States during the requisite periods.

On appeal, the applicant asserts her claim of eligibility for TPS and submits evidence in support of her claim.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant is eligible for TPS only if such alien establishes that he or she:

- (a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign state designated under section 244(b) of the Act;
- (b) Has been continuously physically present in the United States since the effective date of the most recent designation of that foreign state;
- (c) Has continuously resided in the United States since such date as the Attorney General may designate;
- (d) Is admissible as an immigrant except as provided under § 244.3;
- (e) Is not ineligible under § 244.4; and
- (f)
  - (1) Registers for Temporary Protected Status during the initial registration period announced by public notice in the FEDERAL REGISTER, or
  - (2) During any subsequent extension of such designation if at the time of the initial registration period:
    - (i) The applicant is a nonimmigrant or has been granted voluntary departure status or any relief from removal;
    - (ii) The applicant has an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal which is pending or subject to further review or appeal;
    - (iii) The applicant is a parolee or has a pending request for reparole; or

- (iv) The applicant is a spouse or child of an alien currently eligible to be a TPS registrant.

The phrase *continuously physically present*, as defined in 8 C.F.R. § 244.1, means actual physical presence in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences as defined within this section.

The phrase *continuously resided*, as defined in 8 C.F.R. § 244.1, means residing in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous residence in the United States by reason of a brief, casual and innocent absence as defined within this section or due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside the control of the alien.

The phrase *brief, casual, and innocent absence*, as defined in 8 C.F.R. § 244.1, means a departure from the United States that satisfies the following criteria:

- (1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;
- (2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and
- (3) The purposes for the absence from the United States or actions while outside of the United States were not contrary to law.

Persons applying for TPS offered to El Salvadorans must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. On July 9, 2002, the Attorney General announced an extension of the TPS designation until September 9, 2003. A subsequent extension of the TPS designation has been granted by the Secretary of the Department of Homeland Security, with validity until March 9, 2005, upon the applicant's re-registration during the requisite time period.

The burden of proof is upon the applicant to establish that he or she meets the above requirements. Applicants shall submit all documentation as required in the instructions or requested by Citizenship and Immigration Services (CIS). 8 C.F.R. § 244.9(a). The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. To meet his or her burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his or her own statements. 8 C.F.R. § 244.9(b).

On April 23, 2003, the applicant was requested to submit evidence establishing her residence in the United States since February 13, 2001, and her physical presence in the United States since March 9, 2001, to the date of filing her application. In response, the applicant submitted some evidence in an attempt to establish her continuous

residence and continuous physical presence in the United States. The director, however, determined that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS and denied the application on July 14, 2003.

On appeal, the applicant states that she first entered the United States in December 2000, and that she had provided the requested evidence of her physical presence, including affidavits. She further states that she did not have bills because a relative paid for them, and that she did not work until she received her Employment Authorization card. The applicant asserts her claim of eligibility for TPS, and states that she has provided sufficient proof of her residence in the United States since December 2000.

Along with her appeal, the applicant provides the following documentation: a letter dated August 11, 2003, from Pastor [REDACTED] of the Iglesia Biblica Faro De Luz church, who stated that the applicant is known by many people of the church from the time they have known her; an affidavit dated July 30, 2003, from Mrs. [REDACTED] owner of the Tagueria Montecristo Restaurant in Chelsea, Massachusetts, who stated that the applicant had been working for her since January 2001, and that she got paid in cash until she received her Social Security card and work permit; a letter dated August 7, 2003, from Mr. [REDACTED] President of S.V. Cleaning, Inc., who stated that the applicant worked for him from December 2000 through March 2001; an affidavit dated August 4, 2003, from Ms. [REDACTED] who stated that the applicant had been living in one of her apartments since December 2000, paying \$200 per month in rent; an affidavit dated July 30, 2003, from an acquaintance, Mr. [REDACTED] who stated that he has known the applicant since 1990, and that she arrived in the United States in December 2000; an affidavit from Mr. [REDACTED] who stated that he has known the applicant since December 2000, and that she has lived in the same apartment with him, paying \$200 per month for rent, plus utilities; and copies of the front and back of an envelope addressed to the applicant bearing a date stamp of February 15, 2001.

The church letter from Pastor [REDACTED] does not provide any specific dates in which he claims to have known the applicant. The employment letters from Ms. [REDACTED] and Mr. [REDACTED] have little evidentiary weight or probative value as they do not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(i). Specifically, the affiants do not provide the address where the applicant resided during the period of her employment. In addition, Mr. [REDACTED] letter is not in affidavit form, and is not supported by any corroborative evidence.

Regarding her residence, Mr. [REDACTED] indicated that the applicant had lived with him at [REDACTED] from December 2000 to July 2001. However, the record of proceedings also contains an affidavit dated May 13, 2003, from Ms. [REDACTED] who stated that the applicant had resided in one of her apartments located at [REDACTED] from December 2000 to June 2001. Further, Ms. [REDACTED] stated that the applicant lived in one of her apartments since December 2000; however, she did not provide the address of the apartment. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant has failed to submit any objective evidence to explain or justify the discrepancies. Therefore, the reliability of the remaining evidence offered by the applicant is suspect.

The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). It is determined that the documentation submitted by the applicant is not sufficient to establish that she satisfies the residence and physical presence requirements described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

An alien applying for TPS has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has failed to meet this burden.

**ORDER:** The appeal is dismissed.